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March 1, 2000

The Honorable William Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
-8-B-201
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: CC Docket No. 98-184

Dear Chairman Kennard:

The Competitive Enterprise Institute (CEI) and Citizens for a Sound Economy Foundation (CSE Foundation) hereby submit these comments in favor of the application of Bell Atlantic and GTE to transfer control of certain licenses pursuant to a proposed acquisition of GTE by Bell Atlantic.

CEI is a non-profit, 501 (c) (3), non-partisan research and education foundation, established in 1984 to foster marketplace approaches to public policy issues involving regulation. Toward that end, we conduct research, sponsor conferences and forums, and, where appropriate, participate in regulatory proceedings.

CSE Foundation is also a non-profit, 501 (c) (3), non-partisan research and education foundation. For more than fifteen years, CSE Foundation has been educating consumers and the policy community about market-based solutions to public policy problems. In the last year alone, CSE Foundation hosted five educational events in Washington, D.C., and more than 150 events around the country with a technology or telecommunications policy focus.

H.L. Mencken observed that "a man may be a fool and not know it, but not if he is married." The same could be said of any two firms that merge. However, unlike a marriage, it is neither the suiting nor the suited firm that disciplines a merger. Every firm in the marketplace – new and old, big and small – seeks the attention and loyalty of consumers.

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As outlined in earlier comments by CEI in this proceeding, we see this merger as potentially very pro-consumer.¹ As a first matter, it is important to note that the current wave of telecom mergers is part of a broad restructuring of the telecommunications market. As telecommunications technology advances, and threats of competition to former monopoly providers are realized, it is increasingly clear that the artificial division of the industry into seven neat regions, plus GTE, no longer makes sense.

Far from being a regional business, telecommunication is national – even global – in scope. For a variety of reasons – capital formation, cost synergies, ease of one-stop-shopping – firms are reaching out beyond their former regional boundaries. In short, the telecommunications industry is readjusting – throwing off the arbitrary divisions imposed on it by Judge Harold Greene in 1983, and reshaping the industry based more on modern market realities.²

This promises more – not less – choice for consumers. No one will see a reduction in the number of wireline carriers due to this merger. Bell Atlantic and GTE do not compete with each other for wireline services, and no evidence has been produced in this proceeding to indicate that they have had plans to do so.

Concerns over market power in local wireline services have also been reduced by other developments in this industry since this proceeding began some 17 months ago. Perhaps, most notably, the acquisition by AT&T of TCI and MediaOne promises rapid development of a facilities-based local competitor to compete with Bell Atlantic head-to-head.

Far from being a threat to competition, this merger promises to further it in many ways. In local service, it will position the merged company to compete for local service outside of its region. (In fact, the companies have already taken a number of steps in this direction.)

Moreover, the merger would also create a national wireless provider. In addition to increasing competition in wireline communications, a third national wireless provider would help ensure and expand competition in the wireless market. The proposed merger could also foster the development of competition in the Internet backbone market, especially after Bell Atlantic is authorized to offer long-distance services in more states.

Given these potential benefits, this merger should be approved. We believe, as stated in earlier filings and letters to the Commission, that such action would be appropriate and beneficial to consumers even without any special conditions. While

¹ Comments of the Competitive Enterprise Institute, *In the Matter of Applications of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer of Control*, CC Docket No. 98-184 (filed Nov. 23, 1998). See also letter from James Gattuso, Competitive Enterprise Institute, and Kent Lassman, CSE Foundation, to the Honorable William Kennard, Dec. 11, 1998.

² For a more general analysis of telecommunications restructuring, see “Understanding the Urge to Merge in the Telecommunications Industry,” CSE Foundation *Issue Analysis* No. 91, May 20, 1999.

unnecessary, the conditions now proposed by Bell Atlantic should only serve to reduce any perceived dangers from this merger.

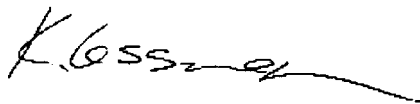
We are concerned, however, that additional conditions not be imposed. Telecommunications restructuring should not be used as an excuse to impose new regulation (or to reimpose old regulation) on the telecommunications industry on an *ad hoc* basis. Rather than attempt to micromanage the activities of restructured firms, the Commission's goal instead should be to remove regulatory barriers that keep competition from developing fully. That is the only regulatory model flexible and responsive enough to work in the highly dynamic and fast-changing communications marketplace.

We also urge the Commission to move as quickly as possible on this matter. This merger has been pending before the Commission since October 1998, and was approved by the Department of Justice months ago. This kind of delay is detrimental to consumers, especially in quickly changing, restructuring industries such as this.³

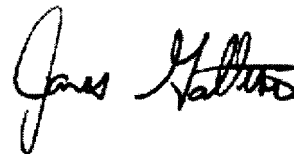
Separate from this proceeding, we also urge the Commission to reevaluate its standards for mergers. The traditional "public interest" standard has proved too vague and ambiguous to allow for expeditious decision in cases such as this. Rather than an *ad hoc* public interest determined as each instance comes before the Commission, use a consumer welfare standard. At every turn ask: "Would this merger increase or decrease consumer welfare?"

To summarize, this merger – part of a general restructuring of the telecommunications industry – promises significant benefits to consumers. While unnecessary, we believe the conditions proposed by Bell Atlantic and GTE serve to further reduce any possibility of consumer harm. We urge the Commission not to impose any additional conditions. Such *ad hoc* regulation would likely only reduce the benefits consumers can gain from telecommunications restructuring.

Sincerely,



Kent Lassman
Deputy Director, Technology and
Communications Policy
CSE Foundation



James Gattuso
Vice President, Policy
and Management
Competitive Enterprise Institute

cc: Commissioner Furchtgott-Roth
Commissioner Ness
Commissioner Powell
Commissioner Tristani

³ See, Robert Ekelund, Jr. and Mark Thornton, "The Cost of Merger Delay in Restructuring Industries," *Heartland Policy Study* No. 90, Heartland Institute, June 23, 1999.